

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5046 OF 2007

Vijay Ganpat Bendarkar .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Mr.Rakesh Bhatkar for petitioner

CORAM : S.C.DHARMADHIKARI, J.
DATE : 3rd December 2007

P.C.

. In my view, the entire exercise before the trial court was unnecessary. The trial court having framed the issues and was seized of the matter, could not have entertained an application mid-way of one of the tenants to delete the issue regarding tenancy rights of the petitioner. The trial court instead of adhering to the time schedule for disposal of the suit has gone into issues which were not germane and relevant at the

stage at which the matter stood. If at all there was material before the Court with regard to the pendency rights in agricultural lands, the matter was required to be referred to the appropriate authority in accordance with law. At this stage, the trial court was not obliged to go into or decide as to whether the petitioner would be a tenant within the meaning of the provisions and more particularly, Bombay Tenancy and Agricultural Lands Act, 1948. In such circumstances, the order under challenge is set aside. The issue remains on file very much in the suit, which must be tried along with other issues. Needless to state that Court below must deal with issues de hors all observations in the impugned order which stands quashed and set aside. The matter must now be decided on merits and in accordance with law. Petition disposed of.

(S.C.Dharmadhikari, J)